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May 13, 2019

Clerk, United States District Court
Eastern District of Michigan
Theodore Levin United States Courthouse
231 West Lafayette Blvd
Detroit, Michigan 48226

RE: KILPATRICK v. UNITED STATES OF AMERICA
Cause No. 2-10-cr-20403-NGE-MKM-1

Dear Clerk,
Please find and accept for filing DEFENDANT'S REPLY MEMORANDUM to GOVERNMENT'S REBUTTAL TO MOTION FOR REHEARING AND MOTION FOR DISQUALIFICATION/RECUSAL. Motion for Disqualification/Recusal was filed to this court pursuant to section 455(a). ORAL ARGUMENT REQUESTED.

I. INTRODUCTION

The 17-page Response in opposition to the Motions for Reconsideration and Recusal lacks real substance and pertinence. Remarkably, the government response omits virtually any mention of the stringent 455(a) standard governing recusal (footnote 1). Nor does the response deny the existence of an extrajudicial social association/ relationship between Judge Edmunds and Attorney Thomas. And, the government response does not devote a single line to the half-hearted inquiry by Judge Edmunds into undeniable conflicts-of-interest set forth with anatomical specificity in Exhibit One to the Affirmation accompanying this Reply Memorandum.

Apparently, the government would like to pretend the hard facts demonstrating a judicial dereliction of duty and the failure to adhere to ethical obligations by both judge and lawyer simply do not exist. The government is indifferent to the deprivation of fundamental Fifth and Sixth Amendment Rights and the integrity of the judicial process.
This win-at-any-cost policy should not be glorified, honored, and preferred by government prosecutors in the federal system of justice, nor for that matter any justice system.

This Reply Memorandum sets the record straight and sounds the Klaxon of ethical alarm with respect to the conduct mandating recusal under the circumstances of these proceedings.

II. THE INSULTS AND DISTORTIONS

There is an old maximum "sinners are mudslingers."

The government response attempts to divert attention from the grave issues of recusal, disqualification, abdication of ethical obligations, and the deprivation of fundamental constitutional rights presented for adjudication. Instead of coming to grips (or at the very least attempting to address) these issues, the government hurls insults at the Petitioner claiming "He has never apologized, never accepted responsibility, never shown any remorse for extorting millions...lashed out at every possible scapegoat...had past difficulties with sworn testimony...(advocated) a recusal standard with no limiting principle...impugned his attorney's reputation at every moment" and on and on. (Gov. Resp. at 1, 4, 9 and 10) (footnote 2) Vitriolic rhetoric of this sort does not clarify the serious questions under review, serves no useful purpose whatsoever and should simply be disregarded.

As remarkable as the use of mindless invective, the failure to deny any of the hard facts supporting recusal or disqualification on the appellate level is even more remarkable. Instead of candidly admitting the wedding card incident occurred, the government characterizes the incident as a "new allegation' (Gov. Resp. at 4); implies the recusal claim has been "waived" (Id. at 5); insinuates the "wedding card" incident did not occurred; and once again without directly denying any of the facts stated in support of recusal attempts to disparage and denigrate these facts as a "series of unsworn paragraphs" (Id. at 4) (footnote 3) and "unsworn accusations" (Id. at 2) "repeatedly rejected" (Id. at 4) and "allegations falling well short of mandating recusal." (Id. at 8).

All of these disparagements share one crucial factor in common; NOWHERE DOES THE GOVERNMENT DENY THE "WEDDING CARD" INCIDENT AND OTHER FACTS MANDATING RECUSAL. NOWHERE DOES THE GOVERNMENT DENY SECRET EX-PARTE MEETINGS AND CONVERSATIONS WITH THE JUDGE. NOWHERE DOES THE GOVERNMENT DENY MEETINGS AND CONVERSATIONS WITH ATTORNEY THOMAS ABOUT HIS GOVERNMENT WITNESS CLIENT AGAINST KILPATRICK AT THE VERY SAME TIME HE WAS REPRESENTING KILPATRICK. NOWHERE DOES THE GOVERNMENT DENY THAT THEY HELPED TO FACILITATE THESE EGREGIOUS CONFLICTS-OF-INTEREST BY SECRETLY WORKING WITH JUDGE EDMUNDS AND ATTORNEY THOMAS.

Instead of stepping up to the ethical plate, hitting a home run for honesty and admitting the truth of the "wedding card" incident, the government tries to downplay the significance of the wedding card and what are undoubtedly additional extrajudicial contacts between the Judge and the Attorney. According to the AUSA Team representing the government:

"Wedding cards are small and familiar way to congratulate new couples on their nuptials. They are a common pleasantry among neighbors, distant friends, professional colleagues, and other acquaintances - a far wider circle than just intimate friends and close family. And because

sending a wedding card is so 'common' and so widespread it would not 'appear to a knowledgeable observer as a sign of partiality'." (Gov. Resp. at 9)

The Emily Post - like (footnote 4) dissertation quoted from the government response completely, and intentionally, misses the point. The question is not the social significance of wedding cards in general. The pivotal inquiry is whether the wedding card incident evidences the real reason why Judge Edmunds (1) adamantly refused repeated requests from Petitioner to replace Attorney Thomas; (2) failed to spearhead a robust and vigorous inquiry into known conflicts-of-interest involving Attorney Thomas representing parties completely adverse to Petitioner, at the same time he acted as Counsel to Petitioner; (3) concocted a "Rube Goldberg" type remedy for one of the conflict situations by appointing an "independent counsel" unfamiliar with the facts of the case, and having no contact with the defense team to represent Petitioner on a limited basis, and failed to call him to court during trial to confront witnesses on behalf of Petitioner. (See Affidavit of Harold Gurewitz, Sworn to December 23, 2018 at paras 1, 2) A copy of the Affidavit was previously filed in support of the Recusal.

The wedding card incident cannot be divorced from these facts and the facts compel recusal pursuant to section 455(a). With Mandrake clairvoyance, the government also claims "sending a wedding card is so 'common' and so widespread, it would not appear to a knowledgeable observer as a sign of partiality." (Gov. Resp. at 14)
On one hand, the government ignores the material operative facts, then, when convenient, asserts what "all knowledgeable" observers would conclude. This is nothing other that an example of the raw "cookery" Plato abjured in "Gorgias", his classic on truth seeking, a quest the government has forsaken in this proceeding.

Based upon known facts, the "wedding card" incident consists of Judge Edmunds sending a wedding card to Attorney Thomas and his new bride; and attorney Thomas expressing his "thanks" and those of his bride to the Judge for sending such a "lovely card." Prior to this incident, neither the Judge nor the Attorney informed the petitioner of the existence of this relationship. The government calls Petitioner's concern with respect to this failure to disclose "odd" because "the court was biased in favor of Petitioner's Attorney. It is unusual for a litigant to complain that a judge views his chosen counsel favorably." (Gov. Resp. at 9-10)
Once again, the government intentionally misses the mark. The Petitioner had repeatedly asked (begged) Judge Edmunds to replace Thomas because multiple conflicts-of-interest of interest involving attorney Thomas had surfaced. None were disclosed by Thomas. All were hidden, secret, undisclosed. And, the subsequent lackluster so-called "investigation" of these conflicts, and jimmy-rigged remedy, demonstrate Petitioner's concern regarding the undivided loyalty of his counsel was well-founded.

Judge Edmunds orchestrated a hard-hearted inquiry into the conflicts and concocted a half-baked so-called "cure" because her extrajudicial friendship and social relationship blinded her to the inability of Attorney Thomas to zealously represent Petitioner. There is no other rational

explanation for why the Judge conducted herself in this fashion, unless more sinister motivations are considered.
Indeed Judge Edmunds accepted a "face value" confirmation (from Attorney Thomas) any potential conflict of interest with O'Reilly Rancilio had been walled off and that Thomas was capable and prepared to represent Petitioner." (Gov Resp. at 10)
Only her social relationship/association with Attorney Thomas could have resulted in such an Ostrich-like posture toward the investigation into substantial conflicts-of interest.

Yet another remarkable (alas lamentable) feature of the government response is the brazen attempt to twist the controlling recusal standard. Indeed, the Government interpretation back-flips the standard onto its head. Contrary to what the government asserts, Petitioner does not and did not argue recusal hinges on his "subjective view." (Gov. Resp. at 6)
Nor as the government implies does Petitioner argue "unsupported, irrational, or highly tenuous speculation" justifies recusal. (Id)
To clarify the attempted distortion of what Petitioner believes the governing recusal standard to be, it is necessary to review the pertinent law.

III. THE 455(a) STANDARD
In 1974 Congress amended the judicial code "to broaden the grounds for judicial disqualification." (88 Stat. 1609)
The relevant legislative history establishes:
"The general language of subsection (a) was designed to promote public confidence in the integrity of the judicial process by replacing the subjective 'in his opinion' standard in earlier statute (28 U.S.C. section 455 1970 ed.) within objective test. (See S. Rep No. 93-419 at 5; HR Rep No. 93-1453 at 5; Liljeberg v. Health Servs. Acquisition Corp., 486 U.S. 847, 858 (1988) (Stevens, J.).

The Amended Statute (never quoted in the government response) mandates: "Any Justice, Judge or Magistrate of the United States shall disqualify himself in any proceeding in which his (her) impartiality might reasonably be questioned" (28 U.S.C. section 455(a)). As a matter of plain text interpretation, the Liljeberg Court stated "advancement of the purpose of the provision-to-promote public confidence in the integrity of the judicial process does not depend upon whether or not the Judge knew of facts creating an appearance of impropriety, so long as the public might reasonably believe that he or she knew (486 U.S. at 859-60). As Mr. Justice Scalia commented in Liteky v. United States, 510 U.S. 540, 548 (1994) (Scalia, J.)
"Subsection (a)...is an entirely new 'catchall' recusal provision, covering...bias and prejudice grounds (amongst other grounds)...requiring them all to be evaluated on an objective basis...what matters is not the reality of bias or prejudice, but its appearance. Quite simply and quite universally recusal [is] required whenever impartiality might reasonably be questioned."

In essence, public trust in the judiciary turns upon the integrity and probity of the Judges, and this in turn depends upon their absolute avoidance of even the appearance of partiality and impropriety.

The government response ducks any substantive effort to explain why the facts set forth with anatomical specificity in the attached exhibits (footnote 5) do not trigger Section 455(a) and mandate recusal. Silence in this context is indicative of the inability to posit anything other than a crippled reply.

The standard so assiduously avoided in the government response is bright-line, clear-cut and uncompromising. "Recusal is required if a reasonable, objective person, knowing all of the circumstances, would have questioned the Judge's impartiality." United States v. Girod, 2018 U.S. App. Lexis 9007 (6th Cir. 2018) at 8 citing Hughes v. United States, 899 F.2d 1445, 1501 (6th Cir. 2018) (same). The Judge "must disqualify herself" in this situation (Whipple v. Tenn. Bd. of Paroles, 2019 U.S. App. Lexis 238 (6th Cir. 2019) at 11.

And in a questionable case or in a case of a close call, the judge must err on the side of recusal. See Dandy, supra at 1349; Roberts v. Bailor, 625 F.2d 125, 129 (6th Cir. 1980).

The standard for recusal is "not based on the subjective view of a party." Burely v. Gagacki, 834 F.3d 606, 615-16 (6th Cir. 2016) citing Dandy, supra at 1349. (In Dandy, supra, the trial judge informed the parties of the facts relating to a potential bias claim).

In the Liljeberg, supra, in the course of affirming vacatur on the grounds of a section 455(a) violation even after the judgment was final (as in this present case), the Supreme Court stressed the purpose of the recusal statute, "is to avoid even the appearance of partiality." (486 U.S. at 800). In this connection, the Liljeberg court relied upon the admonition of the great guardian of the constitution Mr. Justice Hugo Black in his opinion in In Re Murchison, 349 U.S. 133, 136 (1955) (Black, J.): *"We must continuously bear in mind that to perform its high function in the best way, Justice must satisfy the appearance of Justice."*

In this case, the course of conduct pursued in tandem by Judge Edmunds and Attorney Thomas has painted an appearance of justice in the likeness of the "picture of Dorian Grey." Their actions have separated the truth seeking function of the court and officers of the court from the twin anchors of integrity and impartiality, threatening both fundamental fairness and the public perception of the judicial system. It is little wonder the government response (given the conduct of the judge and attorney under scrutiny) hides from a standard tied to the perception of partiality and the appearance of a lack of impartiality.

IV. THE CLOCK AND THE CALTROPS

Scattered throughout the government response are claims the recusal motion is somehow "waived" (Gov. Resp. at 6); "is too late" (Id at 11); "is too late...a week too late" (Id), and therefore should not be considered, even though the government concedes the "time limit is specified in Local Rule 7.1(h)(1) is not jurisdictional" (Id. at 12). The government also knows Petitioner is filing pro se and incarcerated, and therefore the "prisoner mailbox rule" applies.

(Petitioner did not receive any knowledge of the denial of his 2255, nor the Judge's opinion until 7 days after the date it was given).
Even though the government is aware of these facts, it contends the recusal issue should not be considered under this purported "claim-processing rule." The government urges denial of the motion for reconsideration on that basis. (Id)
All of this "time bar" caterwauling must yield to the paramount principles of safeguarding the integrity of the judicial process; protecting Petitioner against the unconstitutional deprivation of his Fifth and Sixth Amendment Rights and ensuring officers of a Federal Court (Judge and Attorney alike) must adhere to their oaths as Officers of the Court, and avoid the appearance of partiality and impropriety.

The government (apparently in desperation) attempts to block consideration of the merits of the recusal motion on the alleged ground of "two other barriers" (Gov. Resp. at 13) of seeking to "add a new claim" and an "unexcused procedural default." (Id at 13 and 14).
These technical defenses are properly styled "caltropic" because they invoke the image of the caltrop, a medieval defensive weapon designed to impede the advance of calvary. (The caltrop is an iron ball with multiple spikes staked across the ground where opposing calvary might attack. In much the same way the government stakes hyper-technical defenses, throughout its response, to prevent disclosure of highly-questionable conduct mandating recusal.
The government response places the limitations and procedural bars, all of which are caltropic defenses, in the way of getting to the bottom of what occurred between Judge Edmunds and Attorney Thomas, and whether the judge must step-down for the sake of ethical, moral, and legal good order. In view of the stringent standard set forth in section 455(a), the answer is an unqualified affirmative; especially in further view of the lack of any cogent response to the hard facts demonstrating recusal is necessary at this stage.

V. THE LIFE OF HERMIT

As a truly last gasp,, the government claims recusal in this case would condemn a federal judge "to be a hermit removed from the world" (Gov. Resp. at 4) and force the judiciary to become a "judicial monastic order; a strange collection of lifeless, friendless things, entirely removed from ordinary circumstances of everyday life." (Id at 5)

In this regard, the government seems to conjure an image from the "Walking Dead" television series. Rest assured, subjecting Judge Edmunds and Attorney Thomas to scrutiny will not transform the federal bench into a band of zombies. This sensational contention is designed to create a smoke screen to obscure the crucial issues raised in the recusal motion. All of the responses--the claim processing bar, the procedural default, the purported untimeliness, the whole hodge-podge of technical defenses can not conceal the stark truth; the government (in a 17 page response), nor Judge Edmunds, nor Attorney Thomas have uttered a single word denying the hard facts supporting recusal. Not one peep. Their silence speaks volumes.

VI. DISCOVERY IS APPROPRIATE

NONE of the facts warranting recusal have been denied. NOT ONE. Those facts (now affirmed) justify recusal standing alone. If these facts require augmentation then the only just solution is discovery. *"Let There Be Light" (Genesis 1:3)*

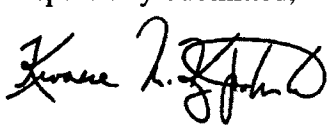
The government, Judge Edmunds and Attorney Thomas should welcome discovery (as outlined in the prior filing in support). Discovery would serve the interests of justice and fundamental fairness, safeguard the integrity of the judicial process, protect the constitutional rights of Petitioner, and maintain the essential good order, ethical order, and legal order of our system of justice.

VII. CONCLUSION

Cover-Up, Whitewashing, and Stonewalling are the enemies of our system of Justice. In this case the lantern of recusal compels disqualification of Judge Edmunds. The hard unrefuted and undenied facts demonstrate recusal is necessary.

For the reasons stated in this reply and the other filings in support of the recusal/disqualification motion, the presiding Judge should step-aside sua sponte, or in the alternative be directed to step-aside.

Respectfully Submitted,



Kwame Kilpatrick
Petitioner/Defendant
pro se in forma pauperis

FOOTNOTE ONE (1)
There is a fleeting reference to a snippet of the controlling Section 455(a) standard at page six of the government response. This legal fragment twists the actual standard beyond recognition, infers the the hard facts supporting recusal are "unsupported, irrational or highly tenuous speculation" and cites a case (United States v. Dandy), 998 F.2d 1344, 1349 (6th Cir. 1993) in which the trial judge (unlike Judge Edmunds in this action made full and complete disclosure of all facts relating to potential bias and the appearance of partiality prior to trial. (To quote the old "cracker barrel" wisdom: "The Dandy citation is a real doosey, akin to the general obfuscation of issues throughout the government response).

FOOTNOTE TWO (2)
References in the form "Gov. Resp. at ___" are to the Government Response to Petitioner's Motion for Reconsideration and Motion for Disqualification/Recusal filed May 3, 2019 and served by mail upon the Petitioner on May 8, 2019. Curiously, the government opted to serve via regular postal mail, instead of legal priority mail or electronic mail.

FOOTNOTE THREE (3)
Annexed to this Reply Memorandum are the two exhibit attached to the previous Memorandum filed in Support of the Recusal and/or Disqualification of Judge Edmunds. The government has NEVER DENIED ANY OF THESE FACTS. Accompanying, this Reply Memorandum is an affirmation of the Petitioner stating upon personal knowledge all of the facts set forth in the exhibits are true.

FOOTNOTE FOUR (4)
No Offense or sleight to the social acumen of Gloria Vanderbilt.

FOOTNOTE FIVE (5)
To rapidly dispatch and inter any potential technical hullaballoo relating to the affirmation: Petitioner notes this court has an obligation in light of his pro se status to zealously protect his efforts consistent with the high standard of fundamental fairness the Constitution requires in criminal case where Life and Liberty are at stake.
See Fay v. NOIA, 372 U.S. 391, 399 (1963). As a matter of Fundamental Fairness and protection of a pro se litigant, the filing of the affirmation should be deemed to have occurred, nunc pro tunc as of the date the original petition for Reconsideration was filed.

FOOTNOTE SIX (6)
The Government trumpets the fact recusal would not be required "when the attorney is the judge's next-door neighbor" or "former law clerk" or when "the judge has a picture of the former-law-clerk turned attorney kissing the judge on the cheek." (Gov. Resp. at 7-8)
These examples as well as the cases cited in support all come tumbling down of their own irrelevant weight because they have nothing to do with what transpired in the sorry state of affairs of this case.

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May 13, 2019

The Honorable Judge Nancy G. Edmunds
Eastern District of Michigan
Theodore Levin United States Courthouse
231 West Lafayette Boulevard

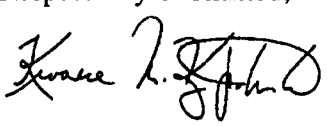
RE: KILPATRICK v. UNITED STATES OF AMERICA

Dear Judge Edmunds,

Enclosed in support of my motion seeking recusal are true and accurate courtesy copies of my Reply Memorandum and my Affirmation in Support of my Recusal Motion. I again request Oral Argument. There is no doubt Oral Argument will assist clarification of the Recusal issues and promote an opportunity to explain in open court why the sunshine of discovery is required in this matter.

Hopefully the court receives this letter Requesting Oral Argument in the same spirit in which the Request for Discovery has been presented. I have no doubt all parties concerned will welcome discovery in the interest of protecting the integrity of the judicial process and achieving the objective and goals of Section 455(a).

Respectfully Submitted,



Kwame Kilpatrick
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